IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

CWP No.738 of 2004

Date of decision : 23.4.2007.

Ex. Naik Suresh Kumar — Petitioner

Vs.

Union of India and others — Respondents

Coram:

The Hon'ble Mr.Justice Rajiv Sharma, Judge.

Whether approved for reporting?[1]

For the Petitioner : Mr. Ramakant Sharma, Advocate.

For the Respondents : Mrs. Shilpa Sood, Addl. C.G.S.C.

Rajiv Sharma, J.

This petition is directed against the Annexure-P2 dated 12.3.1997 and 16.5.2000. The brief facts necessary for the adjudication of this petition are that the petitioner was enrolled in the Dogra Regiment on 24.7.1979 and after the completion of Basic Military Training, he was posted to the 7th Battalion Dogra Regiment. He suffered injury while on annual leave on 28th July,1981 resulting in supra condylar Facture humerus (LT) . Consequently, he was placed in low medical category CEE (Temp) for one year w.e.f. 12th October, 1981. He reported for medical re-categorisation and was placed under medical category BEE (Temp) for 2 years w.e.f. 4.11.1982 and remained in the same category up to March, 1984. He got himself medically examined again in March, 1984 and was categorized in category low medical CEE(Permanent) w.e.f. 28.3.1984 and he remained in this category till his discharge from the Army i.e. 1.8.1986. The petitioner was also brought before a Released Medical Board who vide proceedings dated 15.12.1995 issued a released order after medically examining him and he was held entitled for disability pension as per column No.21 and as per column No.2 (c) for the injury received in 1981 stated to have been aggravated because of stress and strains of army service. Despite the issuance

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[1] Whether reporter of local papers are allowed to see the judgment ?

of Annexure-P1, whereby the case of the petitioner was recommended for disability pension, the claim of the petitioner was rejected on 12.3.1997 vide Annexure-P2.

Feeling aggrieved by the communication dated 18.2.1997, he preferred an appeal which was also rejected on 16.5.2000 vide Annexure-P6.

This petition was admitted on 28.12.2004. The respondents were granted three months time to file the reply on 28.12.2004. The respondents have not chosen to file their reply.

Mr. Ramakant Sharma had strenuously urged that on the basis of Annexure-P1, the petitioner was entitled to get disability pension and his claim has been rejected arbitrarily on 12.3.1997. He further submits that the appellate order dated 16.5.2000 is not a speaking order.

Mrs. Shilpa Sood has supported the orders dated 12.3.1997 and 16.5.2000.

I have heard the parties and gone through the record.

Admittedly the petitioner has suffered injury on 28.7.1981 when he was on annual leave. The petitioner has injured his left hand resulting in supra condylar Facture humerus (LT) . The petitioner was placed in low medical categories, as discussed above. It has come in Annexure-P1 that injury occurred in 1981 is not attributable to service but aggravated because of stress and strain of service. The petitioner's case has been recommended by the Medical Board proceedings on 15.12.1995 for disability, gratuity and pension.

In the letter dated 12.3.1997, it is mentioned that the injury was not attributable to military service and consequently the claim of the petitioner for disability pension was rejected. While rejecting the case of the petitioner as communicated on 12.3.1997, the opinion of the Medical Board who has specifically opined that the injury has aggravated because of stress and strain of service has been overlooked. The petitioner was on annual leave on the date when he received injury in the month of July,1981 and he was to be treated on active army duty. Similarly, the appeal preferred by the petitioner has been rejected on the following grounds reproduced as under:-

> **"3. On perusal of your medical/service documents, it has been found that you had sustained injury on 28 July 81 when you slipped on wet floor while on Annual leave w.e.f. 15 June 81 to 17 Aug 81 at home/ away from your duty station. Hence, your disablement in such circumstances is not related to your duties of Military service.**

It is evident from the extracted portion of letter dated 16.5.2000 that the sole ground for rejecting the claim of the petitioner for disability was that he received the injury while on annual leave w.e.f. 15.6.1981 to 17.8.1981 at home and thus his disablement was not related to his duties of military service. The question whether the petitioner is entitled to disability pension occurred during the annual leave is no more res integra.

The Hon'ble Supreme Court in **1995 Supp (3) Supreme Court Cases 232,** ***Lance Dafadar Joginder Singh versus Union of India and others,*** has held as under:-

> **"The question for our consideration is whether the appellant is entitled to disability pension. We agree with the contention of Mr. B. Kanta Rao, learned counsel for the appellant that the appellant being in regular Army there is no reason why he should not be treated as on duty when he was on casual leave. No Army Regulation or Rule has been brought to our notice to show that the appellant is not entitled to disability pension. It is rather not disputed that an army personnel on casual leave is treated to be on duty. We see no jurisdiction whatsoever in denying the disability pension to the appellant."**

The petitioner has received injury on 28.7.1981 while on annual leave and as per Annexure-P1, the same has been aggravated because of stress and strain of service. The case of the petitioner is squarely covered by the above cited judgment.

The upshot of the above discussion is that the petitioner has received injury on 28.7.1981 during the course of active army duty and stood aggravated due to stress and strain of the military service enabling the petitioner to get disability pension.

Accordingly, this petition is allowed. Impugned Annexures-P2 dated 12.3.1997 and P-6 dated 16.5.2000 are quashed and set aside.

Normally this Court would have directed the respondents to re-consider the case of the petitioner afresh but since the case of the petitioner is squarely covered by the judgment of Hon'ble Supreme Court on the basis of which the petitioner is to be treated on duty when he was on annual leave w.e.f. 15.6.1981 to 17.8.1981, it is a fit case where the respondents are directed to grant disability pension to the petitioner from the date when he was discharged from Army treating him to have incurred disability as assessed by the Medical Board. The respondents shall finalise the disability pension case of the petitioner within two months from the receipt of the judgment. The petitioner shall be further paid all the arrears of the pension within a further period of two months thereafter.

(Rajiv Sharma)
Judge.

April 23,2007
(Gandhi)